

CARL WITTMAN ET AL.

IBLA 74-215

Decided June 28, 1974

Appeals from Medford District Office, Bureau of Land Management, proposal for Robinson Gulch Timber sale, OR 74-43.

Appeals dismissed.

Rules of Practice: Appeals: Generally

An appeal from a determination or decision which is not final or which is interlocutory in nature is premature and will be dismissed unless permission is first obtained for the filing of such an appeal from the Board of Land Appeals upon a showing that an immediate appeal may materially advance the final decision, and that the ruling complained of involves a controlling question of law. 43 CFR 4.28.

APPEARANCES: Carl Wittman, Patti Boch, Ellen Kaufer, Fran Romanski, and David L. Gamble, each pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

A timber sale covering the Robinson Gulch Area was proposed by the Medford District Office, Bureau of Land Management (BLM). The area comprises a portion of the Oregon & Coos Bay Railroad Reconveyed Lands which, by Congressional mandate, is administered under the principles of sustained yield as a permanent source of timber. 43 U.S.C. § 1181a (1970). The directives relating to management and sales are set forth in 43 CFR Group 5000 and detailed in the BLM Manual. The record before us indicates adherence to those directives by Bureau personnel.

As preliminary plans for timber harvest were being made, Carl Wittman (subsequently joined by others) voiced fears that a cut of virgin timber would lower the water table and otherwise damage the environment. In order that all parties might be

apprised of the BLM proposal, including location of roads, methods of cut, possible resultant damage as well as possible benefits, the District Manager held a public meeting. Cf. 43 CFR 5042.2. At that time the pros and cons of the timber sale proposal were discussed with Wittman and other interested parties. BLM did not cancel the proposal. Wittman, on December 22, 1973, "appealed" the District Office failure to cancel the proposal. This was followed by an "appeal," filed on January 21, 1974, by Patti Boch, Ellen Kaufer and Fran Romanski. David L. Gamble subsequently filed an appeal on February 4. Due to the widespread publicity and advertising attending all BLM sales and the interest engendered thereby, additional protests may be anticipated.

The BLM proposal to sell timber from Robinson Gulch is not a final decision -- it is just a proposal to sell. The present determination to proceed with sale preparations is not dispositive of the threshold question --whether to sell the timber as presently proposed. Unending delays caused by piecemeal adjudication (were each protest to be considered separately) are inimical to effective land administration. To avoid such shoals, we adhere to the rule that no appeal will lie from a determination or decision which is not final or is interlocutory in nature unless permission is first obtained from the Board to file an appeal, upon a showing that an immediate appeal may materially advance the final decision and that the ruling complained of involves a controlling question of law. Anna C. Madros, 7 IBLA 323, 79 I.D. 606 (1972).

Even if we were otherwise inclined to consider the subject protests, we would refrain from so doing unless all issues and all interested parties seeking the same relief were before us. Cf. Rules 18 and 20, Federal Rules of Civil Procedure. Here we are involved with common issues relating to the same proposal for sale. A joinder of all protestants 1/ (i.e., of all persons similarly situated) would facilitate a final decision. Smith v. North American Rockwell Corp., 50 F.R.D. 515 (D.C. Okla. 1970).

The regulations support the position that 1) the subject appeals are premature, and 2) the District Manager may withhold action on the protests to afford opportunity for all interested parties to be heard. Attention is directed to 43 CFR 4.450-2

1/ A protestant who has clearly and succinctly stated his cause, within the ambit of 43 CFR 4.401, is a party who may appeal. A decision dismissing a protest will afford the aggrieved party a 30-day period in which to appeal. 43 CFR 4.411. A successful applicant for the sales contract, if one has been named, will be designated as an adverse party.

declaring that a person who does not claim title to or an interest in land adverse to another (as in the case before us), may take objection before BLM and the objection "will be deemed to be a protest and such action thereon will be taken as is deemed to be appropriate in the circumstances." This envisages and authorizes the District Manager to withhold final action on the protests until all interested parties have been heard; or, when he believes the information before him is sufficient upon which to make an informed determination, he may sustain the protests and cancel the sale in whole or in part – or he may proceed with the sale.

For the reasons outlined above and pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeals are dismissed.

Frederick Fishman
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joan B. Thompson
Administrative Judge

